

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

1633 BROADWAY MARS RESTAURANT  
CORP.,

Debtor.

Case No. 08-CV-04543 (TPG)

**DECLARATION OF CONSTANTINE D. POURAKIS IN SUPPORT OF APPELLANT'S  
MOTION TO DISMISS DOCKETED APPEAL WITHOUT PREJUDICE**

CONSTANTINE D. POURAKIS, an attorney duly admitted in the courts of New York and before this Court, hereby declares the following under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am an associate of the firm Stevens & Lee, P.C., co-counsel to Appellant Paramount Group, Inc., as agent for PGREF I, 1633 Broadway Tower L.P. ("Paramount").

2. I am familiar with all the facts and the circumstances set forth herein and submit this declaration in support of Paramount's motion to dismiss its appeal, pursuant to Federal Rule of Bankruptcy Procedure 8001(c)(2), from the February 7, 2008 order of the Bankruptcy Court for the Southern District of New York denying, *inter alia*, Paramount's motion for relief from the automatic stay, which was docketed with this Court on May 16, 2008 (the "Bankruptcy Court Order").

3. A true and correct copy of Paramount's Notice of Appeal of the Bankruptcy Court Order, dated February 15, 2008, is annexed hereto as Exhibit "A."

4. A true and correct copy of the Civil Cover Sheet from this Court and filed with the Clerk of the Bankruptcy Court, dated May 16, 2008, is annexed hereto as Exhibit "B."

5. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
June 2, 2008

/s/ Constantine D. Pourakis  
Constantine D. Pourakis

# EXHIBIT A

ROSENBERG & ESTIS, PC  
733 Third Avenue  
New York, New York 10017  
Tel: (212) 867-6000  
Howard W. Kingsley, Esq.

*Attorneys for Paramount Group, Inc., as agent  
for PGREF I, 1633 Broadway Tower, L.P.*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
In re	:	CHAPTER 11
	:	
1633 BROADWAY MARS RESTAURANT CORP.	:	CASE NO. 07-140662 (ALG)
	:	
Debtor.	:	
-----	X	

**NOTICE OF APPEAL**

Paramount Group, Inc., as agent for PGREF I, 1633 Broadway Tower L.P. appeals from the bankruptcy judge's Order denying, *inter alia*, Paramount's Lift-Stay Motion (Docket Entry No. 57) entered in this proceeding on February 7, 2008.

The names of all parties to the order appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

**APPELLANT:**

Paramount Group, Inc., as agent for PGREF I,  
1633 Broadway Tower L.P.

Represented by:

ROSENBERG & ESTIS, PC  
733 Third Avenue  
New York, New York 10017  
Telephone: (212) 867-6000

APPELLEE:

1633 Broadway Mars Restaurant Corp.

Represented by:

Hofheimer Gantlin & Gross, LLP  
530 Fifth Avenue  
New York, New York 10036  
Telephone: (212) 818-9000

and

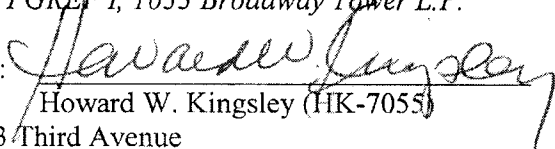
Herrick, Feinstein LLP  
2 Park Avenue  
New York, New York 10016  
Telephone: (212) 592-1400

Dated: New York, New York  
February 15, 2008

Respectfully submitted,

ROSENBERG & ESTIS, P.C.  
*Counsel for Paramount Group, Inc., as agent  
for PGREF I, 1633 Broadway Tower L.P.*

By:

  
Howard W. Kingsley (HK-7055)  
733 Third Avenue  
New York, New York 10017  
Tel: (212) 867-6000

# EXHIBIT B

JS 44C/SDNY  
REV. 12/2005

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

Paramount Group, Inc. as agent for PGREF  
I, 1633 Broadway Tower, L. P.

## DEFENDANTS

1633 Broadway Mars Restaurant Corp.

## ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

## ATTORNEYS (IF KNOWN)

## CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

28 USC 158

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously Assigned

If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
[ ] 110 INSURANCE	[ ] 310 AIRPLANE	[ ] 362 PERSONAL INJURY -	[ ] 610 AGRICULTURE	[ ] 422 APPEAL	[ ] 400 STATE				
[ ] 120 MARINE	[ ] 315 AIRPLANE PRODUCT	[ ] 365 PERSONAL INJURY	[ ] 620 FOOD & DRUG	28 USC 158	[ ] 410 ANTITRUST				
[ ] 130 MILLER ACT	LIABILITY	PRODUCT LIABILITY	[ ] 625 DRUG RELATED	[ ] 423 WITHDRAWAL	[ ] 430 BANKS & BANKING				
[ ] 140 NEGOTIABLE	[ ] 320 ASSAULT, LIBEL &	[ ] 368 ASBESTOS PERSONAL	SEIZURE OF	28 USC 157	[ ] 450 COMMERCE/ICC				
INSTRUMENT	SLANDER	INJURY PRODUCT	PROPERTY		RATES/ETC				
[ ] 150 RECOVERY OF	[ ] 330 FEDERAL	LIABILITY	21 USC 881		[ ] 460 DEPORTATION				
OVERPAYMENT &	EMPLOYERS'		[ ] 630 LIQUOR LAWS		[ ] 470 RACKETEER INFLU-				
ENFORCEMENT OF	LIABILITY		[ ] 640 RR & TRUCK		ENCED & CORRUPT				
JUDGMENT	[ ] 340 MARINE		[ ] 650 AIRLINE REGS		ORGANIZATION ACT				
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT		[ ] 660 OCCUPATIONAL		(RICO)				
[ ] 152 RECOVERY OF	LIABILITY		SAFETY/HEALTH		[ ] 480 CONSUMER CREDIT				
DEFAULTED	[ ] 350 MOTOR VEHICLE	[ ] 370 OTHER FRAUD	OTHER		[ ] 490 CABLE/SATELLITE TV				
STUDENT LOANS	[ ] 355 MOTOR VEHICLE	[ ] 371 TRUTH IN LENDING			[ ] 810 SELECTIVE SERVICE				
(EXCL VETERANS)	PRODUCT LIABILITY	[ ] 380 OTHER PERSONAL			[ ] 850 SECURITIES/				
[ ] 153 RECOVERY OF	[ ] 360 OTHER PERSONAL	PROPERTY DAMAGE			COMMODITIES/				
OVERPAYMENT OF	INJURY	PRODUCT LIABILITY			EXCHANGE				
VETERANS BENEFITS					[ ] 875 CUSTOMER				
[ ] 160 STOCKHOLDERS SUITS					CHALLENGE				
[ ] 190 OTHER CONTRACT					12 USC 3410				
[ ] 195 CONTRACT PRODUCT					[ ] 891 AGRICULTURE ACTS				
LIABILITY					[ ] 892 ECONOMIC				
[ ] 196 FRANCHISE					STABILIZATION ACT				
					[ ] 893 ENVIRONMENTAL				
					MATTERS				
					[ ] 894 ENERGY				
					ALLOCATION ACT				
					[ ] 895 FREEDOM OF				
					INFORMATION ACT				
					[ ] 900 APPEAL OF FEE				
					DETERMINATION				
					UNDER EQUAL ACCESS				
					TO JUSTICE				
					[ ] 950 CONSTITUTIONALITY				
					OF STATE STATUTES				
					[ ] 890 OTHER STATUTORY				
					ACTIONS				

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN *x* IN ONE BOX ONLY)

## ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court  
AND at least one party is a pro se litigant

(PLACE AN *x* IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

**IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)**

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [ ] [ ]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] [ ]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] [ ]
CITIZEN OF ANOTHER STATE	[ ] [ ]	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] [ ]	FOREIGN NATION	[ ] [ ]

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE  
(DO NOT check either box if this a PRISONER PETITION.)

DATE  
5/16/2008  
RECEIPT #

SIGNATURE OF ATTORNEY OF RECORD  
US Bankruptcy Court - SDNY

ADMITTED TO PRACTICE IN THIS DISTRICT  
[ ] NO  
[ ] YES (DATE ADMITTED Mo. \_\_\_\_\_ Yr. \_\_\_\_\_)  
Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)